

commenced within three years of when the violation occurred. Govt C §7488.

G. [§5.80] Invasion of Privacy (Pen C §§630–637.6)

These statutes are intended to protect the right of privacy by regulating eavesdropping on private communications. Pen C §630. Law enforcement officers are exempted from the provisions in Pen C §§631–632. Pen C §633. A person injured by a violation of Pen C §§631–637.1 may bring an action for the greater amount of \$5000 or treble the actual damages and injunctive relief; it is not necessary that the plaintiff show actual damages. Pen C §637.2.

A person injured by a violation of Pen C §637.3, which prohibits the use of voice prints or voice stress analyzers without the person's express written consent given in advance (except by law enforcement officers), may bring an action for the greater amount of \$1000 or the actual damages. Pen C §637.3(c).

A person injured by a violation of Pen C §637.4, which prohibits requiring certain sex offense victims to submit to a polygraph examination as a prerequisite to filing a complaint, may bring an action for the greater of \$1000 or the actual damages. Pen C §637.4(b). A person injured by a violation of Pen C §637.5, which prohibits satellite or cable television companies from illegal eavesdropping on subscribers or illegal dissemination about subscribers, may bring an action for invasion of privacy damages. Pen C §637.5(i).

The small claims court judge will rarely see cases brought under these statutes.

IX. SPECIAL SERVICE CONTRACTS

A. Contracts for Discount Buying Services (CC §§1812.100–1812.129)

1. [§5.81] Statutory Coverage

These statutes apply to organizations that, as their principal business, purport to provide their customers with the ability to purchase goods or services at a discount price. CC §1812.101(a). They seek to restrict false advertising, unfair contracts, and harmful financial practices. CC §1812.100(b). Any waiver by the buyer of the statutory provisions is void and unenforceable. CC §1812.127.

2. [§5.82] Statutory Requirements

The statutory requirements include the following:

- All discount buying organizations must post a bond with the Secretary of State for the protection of persons damaged by their actions. CC §§1812.103–1812.104.
- Before obtaining a buyer's signature on an application or contract, the organization must disclose in writing the exact nature of services provided, availability of goods, warranty or guaranty policy, charges to be paid by the buyer, and any civil or criminal penalties suffered by specified organization officials. CC §1812.106. The organization must also disclose under CC §1812.106 a current list from within the last 60 days of the prices of at least 100 items available through the organization.
- All contracts must be in writing filled in before the buyer signs and must specify the contract period; the buyer must be given a copy at the time he or she signs. CC §1812.107.
- Contracts must limit the term of the contract payments or financing to no more than two years. CC §1812.109. The waiting period must be no more than seven days. CC §1812.110.
- Payment must be refunded to the buyers on request for a delay in delivery of more than six weeks. CC §1812.116.
- The organization must establish a trust account for deposits and contract payments. CC §1812.116.
- The prohibitions of these statutes are not exclusive. CC §1812.126.

3. [§5.83] Relief Available

The buyer has the following available relief:

- The buyer has the right to cancel a contract and receive a full refund within three days of receipt of a copy of the contract by written notice to the seller at the address specified in the contract. CC §1812.118.
- Contracts not in compliance with the statutory provisions may be voided by the buyer. CC §1812.119.
- Any false or misleading information or representations made by the seller and received by the buyer before the contract is signed renders the contract void and unenforceable. CC §1812.120.
- The buyer is entitled to rescission and a prorata refund if the organization moves more than 20 miles farther away from the buyer than when the contract was signed (CC §1812.121(a)), discontinues any promised category of goods or services within six months after the contract was

signed (CC §1812.121(b)), or transfers its obligation to an inferior organization without the buyer's consent after full disclosure (CC §1812.122).

- A buyer who is injured by a violation is entitled to damages and the return of all money paid under CC §1812.123(a). The buyer is entitled to treble actual damages, restitution, and reasonable attorneys' fees and costs, except for a violation of CC §1812.120. For a violation of CC §1812.120 (false information or misrepresentation), the buyer is entitled to the greater amount of (1) \$1000 plus reasonable attorneys' fees or (2) treble actual damages plus restitution and reasonable attorneys' fees. CC §1812.123(a). The seller may correct any violation except of CC §1812.120 within 30 days after the contract was executed and then be liable only for the buyer's actual damages, reasonable attorneys' fees, and costs. However, the buyer must concur in writing with the correction or the contract is void and unenforceable by the seller, who must also give the buyer a full refund. CC §1812.123(b).

B. Studio Dance Lessons (CC §§1812.50–1812.69)

1. [§5.84] Statutory Purpose and Coverage

These statutes seek to eliminate fraud, deceit, imposition, and financial hardship in contracts for dance studio lessons. CC §1812.50. They apply to all those who offer contracts for dance studio lessons. CC §1812.51. See also *People v Arthur Murray, Inc.* (1965) 238 CA2d 333, 47 CR 700. They do not apply to those who are licensed under the Business and Professions Code, regulating the healing arts, or who operate schools under the Education Code. CC §1812.51. Exclusion from application of some of the statutory provisions is provided under CC §1812.67. Any waiver by the buyer of the statutory provisions is void and unenforceable. CC §1812.61.

2. [§5.85] Statutory Requirements

The statutory requirements include the following:

- All contracts must be in writing and the consumer must receive a copy at the time he or she signs. CC §1812.52.
- The contract amount may not have a term for payments or financing longer than one year. CC §1812.53.
- The contract must contain a time to begin performance within six months, a right to cancel by giving written notice and receive a prorata

refund, a statement of the hourly rate for lessons, and information concerning a surety bond. CC §1812.54.

- The contract must contain a release of liability in case of the consumer's death or disability and provide for a refund of money allocable for services not received. CC §1812.57.
- The dance studio must post a bond. CC §§1812.64–1812.65.
- These provisions are not exclusive. CC §1812.58.

3. [§5.86] Relief Available

Contracts that do not comply with the statutory requirements of CC §§1812.50–1812.68 (CC §1812.59) or that were induced by fraud (CC §1812.60) are void and unenforceable.

A consumer damaged by violations is entitled to treble actual damages plus reasonable attorneys' fees. CC §1816.62(a); *Holland v Nelson* (1970) 5 CA3d 308, 314, 85 CR 117. The seller may correct any violation within 30 days after execution of the contract and avoid any liability, except the buyer must concur in writing with any correction that increases the monthly payments, the number of payments, or the total amount due. CC §1812.62(b).

C. Health Studio Services (CC §§1812.80–1812.95)

1. [§5.87] Statutory Coverage

These statutes seek to eliminate fraud, deceit, imposition, and financial hardship in contracts for instruction or training in physical culture, body building, reducing, or figure development. CC §§1812.80–1812.81. However, they do not apply to contracts for such services rendered by licensed health professionals, those who operate schools under the Education Code, or those who offer services relative to weight control not involving physical culture or skill. CC §1812.81. Any waiver of the buyer of the statutory provisions is void and unenforceable. CC §1812.93.

2. [§5.88] Statutory Requirements

The statutory requirements include the following:

- All contracts must be in writing and the customer must receive a copy at the time he or she signs. CC §1812.82.
- The contract may not require payments or financing to exceed the term of the contract, which may not exceed three years. CC §1812.84(a).

- The contract must include a statement in at least 14-point type, disclosing the length of the contract term; this statement must be placed above the place designated for the buyer's signature. CC §1812.84(b).
- Performance must begin within six months of execution and the contract must advise the buyer of cancellation and refund rights. The buyer may cancel the contract until the health studio operator has complied with these requirements. CC §1812.85.
- The contract amount may not exceed \$1000, exclusive of interest or finance charges. CC §1812.86.
- The contract must contain a clause for cancellation and refund upon the consumer's death or disability. CC §1812.89.
- The contract must contain a clause for cancellation if the consumer moves more than 25 miles from the facility and is unable to transfer the contract to a comparable facility. The health studio may retain a predetermined fee of no more than \$100 (\$50 if over half the contract has expired) plus the cost of services already received. CC §1812.89(b).
- These provisions are not exclusive. CC §1812.90.

3. [§5.89] Relief Available

Contracts that violate any of the statutory requirements (CC §1812.91) or were induced by fraud (CC §1812.92) are void and unenforceable.

A buyer damaged by violations is entitled to treble actual damages plus reasonable attorneys' fees. CC §1812.94(a). The seller may correct any violation within 30 days after execution of the contract and avoid liability, except the buyer must concur in writing with any correction that increases the monthly payments, the number of payments, or the total amount due. CC §1812.94(b).

D. Seller-Assisted Marketing Plans (CC §§1812.200–1812.220)

1. [§5.90] Statutory Coverage

These statutes apply to sales or leases of products, equipment, or services that require a minimum initial payment of more than \$500 and less than \$50,000 to be used on the buyer's behalf to begin a business for which it has been represented that the buyer can or will earn more than the initial payment, and for which further representations have been made that there is a market for the product or service or that the seller would buy back the product. CC §1812.201(a). They do not apply, among other things, to sales

of securities, franchises, ongoing businesses, or certain product distributorships. CC §1812.201(b). Any waiver by a buyer of the statutory provisions is void and unenforceable, and a seller's attempt to obtain the buyer's waiver is a violation. CC §1812.216.

2. [§5.91] Statutory Requirements

The statutory requirements include the following:

- Sellers may not use terms such as “buyback,” “secured investment” (in certain specified circumstances), or representations as to income-earning potential unless they are supported by data and the data is given to the buyer. CC §1812.204.
- The first communication with a potential buyer must include a written disclosure as to the seller and the details of the plan (CC §§1812.205–1812.206), which must be filed annually with the Attorney General (CC §1812.203).
- The buyer must be given notice of the right to cancel or void the contract (CC §§1812.208–1812.209).
- The terms and conditions of payment must be fully specified (CC §1812.209) and the downpayment may not exceed 20 percent of the initial payment amount (CC §1812.210).
- The contract must be in writing and the customer must receive a copy at the time he or she signs it. CC §1812.207.

3. [§5.92] Relief Available

The buyer has the following available relief:

- If the seller uses any untrue or misleading statements or fails to give the required disclosure statements to either the buyer or the Attorney General, the contract is voidable by the buyer up to one year after signing, and the buyer may also be entitled to a full refund. CC §1812.215(a).
- If the seller fails to deliver within 30 days of the delivery date stated in the contract, the contract is voidable on written notice to the seller by the buyer and unenforceable by the seller. CC §1812.215(b).
- A buyer damaged by a statutory violation or the seller's breach of contract may receive actual damages, but not less than the amount of the initial payment, plus reasonable attorneys' fees and costs. CC §1812.218.

- The remedies provided are in addition to any other legal procedures and remedies. CC §1812.219.

E. [§5.93] Membership Camping Contracts (CC §§1812.300–1812.308)

Civil Code §§1812.300–1812.308 regulate membership camping operators and contracts as defined in CC §1812.300. Generally, these statutes provide that such contracts are subject to the Unruh Act (see §§5.3–5.8), must contain specified disclosures (CC §1812.302), must be in the same language principally used in the oral sales presentation (CC §1812.303), and are subject to the buyer's specified rights of cancellation (three business days if campground inspected (CC §1812.303); ten business days if campground not inspected (CC §1812.304)). The buyer also has a right of rescission and refund for violation of the statutory provisions. CC §1812.306.

F. Dating Service Contracts (CC §§1694–1694.4)

1. [§5.94] Statutory Coverage

Civil Code §§1694–1694.4 regulate organizations that offer dating, matrimonial, or social referral services by means of names, telephone numbers, and other information, as well as photographs or video selection, personal introductions at the organization's place of business, or a singles social setting provided by the organization. CC §1694.

2. [§5.95] Statutory Requirements

The statutory requirements include the following:

- All contracts must be in writing and the consumer must receive a copy at the time he or she signs. CC §1694.2(a).
- The contract must contain specified conspicuous language concerning the right to cancel and the means for cancellation (CC §§1694.1, 1694.2(b)–(c)), as well as the buyer's refund rights (CC §1694.3).
- No contract shall require payment or financing over more than a two-year period from the date the contract is entered into, nor may the contract term be the life of the buyer. CC §1694.2(d).

3. [§5.96] Remedies

The buyer may cancel within three business days after signing the

contract (CC §1694.1(a)), or at any time if the contract does not contain the required provisions (CC §1694.2(e)). Any money paid under a dating service contract must be refunded within 10 days of receipt of notice of cancellation. CC §1694.1(e).

Contracts that violate any of the statutory requirements (CC §1694.4(a)) or that were induced by fraud (CC §1694.4(b)) are void and unenforceable. A waiver by the buyer of the requirements is also void and unenforceable. CC §1694.4(e).

A buyer who has been injured by violation of the statutory provisions is entitled to treble damages plus reasonable attorneys' fees. CC §1694.4(c).

When the contract price is payable in installments and the buyer has been relieved from making payments, he or she is entitled to a refund or refund credit of the portion of the price not attributable to services already rendered. CC §1694.4(d).

G. Weight Loss Contracts (CC §§1694.5–1694.9)

1. [§5.97] Statutory Coverage

Civil Code §§1694.5–1694.9 regulate contracts with providers of weight loss programs in which persons who are not licensed health care professionals offer various types of assistance in weight reduction, body shaping, diet, and eating habits. CC §1694.5(a)(1). A weight loss contract may also include a program that offers use of facilities or membership in a club or organization for any of the above purposes, as well as prepackaged or pre-measured diet foods. CC §1694.5(a)(2)–(4).

2. [§5.98] Statutory Requirements

The statutory requirements include the following:

- All contracts must be in writing and the consumer must receive a copy at the time he or she signs. CC §1694.7(a).
- The contract must contain specified conspicuous language concerning the right to cancel and the means for cancellation (CC §§1694.6, 1694.7(b)–(c)), as well as the buyer's refund rights (CC §1694.8).
- No contract shall require payment or financing over more than a two-year period from the date the contract is entered into, nor may the services provided for under the contract extend beyond three years. CC §1694.7(d).

3. [§5.99] Remedies

The buyer may cancel within three business days after signing the

contract (CC §1694.6(a)), or at any time if the contract does not contain the required provisions (CC §1694.7(e)). Any money paid under a weight loss contract must be refunded within 10 days of receipt of notice of cancellation. CC §1694.6(e).

Contracts that violate any of the statutory requirements (CC §1694.9(a)) or that were induced by fraud (CC §1694.9(b)) are void and unenforceable. A waiver by the buyer of the requirements is also void and unenforceable. CC §1694.9(e).

A buyer who has been injured by violations is entitled to treble damages plus reasonable attorneys' fees. CC §1694.9(c).

When the contract price is payable in installments and the buyer has been relieved from making payments, he or she is entitled to a refund or refund credit of the portion of the price not attributable to services already rendered. CC §1694.9(d).

H. Rental Purchase Contracts (CC §§1812.620–1812.649)

1. [§5.100] Statutory Coverage

The Karnette Rental-Purchase Act (CC §§1812.620–1812.649) regulates rental-purchase contracts in which a consumer rents or leases personal property for household or personal use for an initial term of less than four months. CC §1812.622(d). This statutory scheme does not regulate retail installment sales. CC §1812.622(d)(1)–(3).

2. [§5.101] Statutory Requirements

The Karnette Rental-Purchase Act requires that every rental-purchase agreement be contained in a single document in at least 10 point type that clearly sets out specified items such as the lessor's name, the total number and amount of periodic payments, the cash price, the rental cost, and a notice that the lessee will not own the property until all the payments are made. CC §1812.623(a). The required format for this disclosure is set out in CC §1812.623(b). The Act prohibits provisions in the rental-purchase agreement, requiring the consumer to waive rights in advance, and provides that an agreement containing any of these provisions is voidable by the consumer. CC §1812.624. The Act also covers advertising requirements (CC §1812.630) and maintenance of the property during the period of the lease (CC §1812.633).

3. [§5.102] Remedies

A consumer damaged by a violation of the Karnette Rental-Purchase Act is entitled to actual damages, 25 percent of the total amount of all payments

(but no lower than \$100 and no higher than \$1000), reasonable attorneys' fees and costs, exemplary damages for intentional or willful conduct, and equitable relief. CC §1812.636(a).

X. CONSUMER WARRANTIES

A. Song-Beverly Consumer Warranty Act (CC §§1790–1795.7)

1. [§5.103] Scope of Act

The Song-Beverly Consumer Warranty Act (CC §§1790–1795.7) establishes implied warranties of merchantability and fitness on all new consumer goods sold at retail. CC §§1792–1792.2. It imposes strict requirements for the waiver of these warranties and prohibits a waiver in certain situations. CC §§1792.3–1793. The Act also imposes a duty on those who install, service, or repair new or used consumer goods to do so in a good and workmanlike manner. CC §§1796–1796.5.

In assessing whether the Song-Beverly Act applies, the court must inquire whether: (1) the plaintiff is a buyer of goods, and (2) the goods purchased are consumer goods. *Atkinson v Elk Corp.* (2003) 109 CA4th 739, 749, 135 CR2d 433. In this case, the court held that roofing shingles are not consumer goods under CC §1794(a) because they are neither removable nor repairable without damage. *Atkinson v Elk Corp.*, *supra*, 109 CA4th at 757.

Under CC §1795.4, leases of consumer goods (defined in CC §1791(g)) that exceed four months are subject to the Act. The manufacturer has the same responsibility to the lessee that it has to buyers. CC §1795.4(b). The lessor has the same responsibilities to the buyer that a seller would have, if the lessor leases from the lessor's own inventory; "inventory" includes goods ordered from another when "the lessor is a dealer in goods of that type." CC §1795.4(c). If the lessor is not leasing from his or her own inventory and has acquired the goods from a third person in order to lease them to the consumer, that third person has the same responsibilities to the buyer that a seller would have in a sale. CC §1795.4(d).

The Act should be used as a complement to the Commercial Code (see §5.110), but the provisions of the Act prevail over the provisions of the Commercial Code when they conflict. CC §1790.3.

Sales of new or used "assistive devices" (defined in CC §1791) for use by a physically handicapped person must be accompanied by a written warranty. CC §1793.02(a). Assistive devices must be specifically fit for the particular needs of the ultimate user. CC §1793.02(a), (d).

The sale or lease of any wheelchair that was paid for in whole or in part